

REMARKS

The Applicants graciously thank the Examiner for the telephonic interview on February 2, 2007, and March 1, 2007 when the claims of the application were discussed, and the Advisory Action dated March 8, 2007.

Claims 1, and 6-30 remain under active prosecution in the present application. Claim 1 has been amended. Claims 2 and 4 have been canceled.

In the Advisory Action dated March 8, 2007, the Examiner rejected pending claims 1, 2, and 6-30, under 35 U.S.C. 102, and 103, as set forth in the office action mailed December 20, 2005. This rejection is addressed in full herein. In addition, the Examiner objected to claim 4. The reasons for the objection are not explained, presumably the objection is the same as the objection in the previous office action mailed December 22, 2006, that states the claim would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Advisory Action also includes a summary of the Examiner-Initiated Interview Summary of March 1, 2007.

Claim Rejections/ Objections

The Examiner objected to claim 4 in a previous office action mailed December 22, 2006, that states the claim would be allowable if rewritten in independent form including all of the limitations of the base claim. Claim 1 has been amended to contains all the limitations of claim 4. The first limitation of claim 4 is the sequences (SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, and SEQ ID NO: 4), which have been added to claim 1. The second limitation of claim 4 is the minimum number of nucleotide residues. The minimum of 8, shown in claim 1, is amended to 18,

this is because each of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, and SEQ ID NO: 4, contain 18 residues. Claim 1 has been amended to include this second limitation because it would be nonsensical if it allowed fewer than the number of nucleotide residues than the number of residues in the sequences. This amendment is supported by the specification because the sequences of claim 4 each contain 18 nucleotide residues. All other pending claims are now dependent on the amended, allowable claim 1, and so are all believed to be allowable.

The Examiner-Initiated Interview Summary of March 1, 2007 states that the term “about” in describing the location of the primer binding sites was discussed. The Examiner states this limitation is met by Klesich et al as Kleisch et al teach that the primers bind to the extracellular domain which is adjacent to the translation start and hence within “about” 50 nucleotides of the translation initiation site. The Examiner further states that Sloostra and Roubos teach a primer that binds to the translation initiation site, hence within about 50 nucleotides of the translation initiation site.

The primers used by Kleisch *et al.*, are not homologous with the oligonucleotide sequences of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, or SEQ ID NO: 4, show in amended claim 1. Therefore Klesich *et al.* does not anticipate amended claim 1.

The Examiner has asserted that the reference Sloostra and Roubos, teaches a primer that binds to the translation initiation site. It is unclear from the information in the Examiner-Initiated Interview Summary of March 1, 2007, and the previous office action mailed December 22, 2006, where that information can be found. The Sloostra and Roubos reference, discusses molecular recognition theory (MTR) and “the observation that corresponding amino acids encoded by sense and antisense RNA show a hydropathic complementarity. In various instances it has been

confirmed that peptides can bind specifically to their complementary peptides.” The Sloostra and Roubos reference examines the *peptides* of sense and antisense hFSH receptor sequences. The reference does not teach the use of a nucleotide capable of forming a stable duplex with a portion of the FSHR transcript. Furthermore, the Sloostra and Roubos reference does not teach the oligonucleotide sequences of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, or SEQ ID NO: 4, show in amended claim 1. Therefore, the Sloostra and Roubos reference does not anticipate amended claim 1.

The use of the term “about” is not necessarily indefinite, see MPEP 2173.05(b)A, which is reproduced below.

The term “about” used to define the area of the lower end of a mold as between 25 to about 45% of the mold entrance was held to be clear, but flexible. *Ex parte Eastwood*, 163 USPQ 316 (Bd. App. 1968). Similarly, in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), the court held that a limitation defining the stretch rate of a plastic as “exceeding about 10% per second” is definite because infringement could clearly be assessed through the use of a stopwatch. However, the court held that claims reciting “at least about” were invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term “about.” *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991).

The use of the term “about” in claim 1 is clear, but flexible. Furthermore, the term “about” does not render the claim invalid for indefiniteness because there is no close prior art; both references cited by the examiner, Klesich *et al.*, and Sloostra and Roubos, do not teach the oligonucleotide sequences of SEQ ID NO: 1, SEQ ID NO: 2, SEQ ID NO: 3, or SEQ ID NO: 4, show in amended claim 1.

CONCLUSION

In light of the amendments and remarks made herein, it is respectfully submitted that the claims currently pending in the present application are in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicants encourage the Examiner to contact their representative, Scott R. Conley at (513) 651-6818 or srconley@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully submitted,

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